



Matt Blunt, Governor • Doyle Childers, Director

DEPARTMENT OF NATURAL RESOURCES

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OCT 24 2005

Ms. Cecilia Tapia
Director, Superfund Division
U.S. EPA, Region VII
901 North 5th Street
Kansas City, KS 66101

Site:	<i>Herculaneum</i>
ID #	<i>110 0006266373</i>
Brook:	<i>2.0</i>
Other:	<i>10-24-05</i>
<i>gm</i>	

Dear Ms. Tapia:

Thank you for your September 29, 2005, letter regarding the southeast Missouri lead materials handling and transportation plan, and the enclosed report of transportation and materials handling issues documented by your staff and contractor. We welcome the U.S. Environmental Protection Agency's (EPA) interest in coordinating with the department to devise and document a strategy to address the continued releases of hazardous substances, pollutants, or contaminants to the environment from the handling and transportation of ore, concentrates, and other metal-bearing materials in southeast Missouri. We have long believed that continued releases of metal-bearing materials during transportation and handling at The Doe Run Company's facilities and other facilities used by Doe Run for transport, transfer, storage and/or processing, and transportation of these materials over public roads in Missouri threaten to create new contaminated sites and recontaminate sites where response actions have been or will be completed. We believe there are potentially a number of facilities and transportation modes and routes that have not been directly observed or investigated by the EPA or the department that need to be included in comprehensive transportation and materials handling planning and procedures. Improvements to Doe Run's physical facilities may also be required to prevent and contain releases and potential releases.

As you may be aware, the EPA and the department have been addressing transportation and materials handling issues and the related human health and environmental risks at the Herculaneum primary lead smelter site for over four years. The EPA and department currently have separate mechanisms requiring a Transportation and Materials Handling Plan (TMHP) for the Herculaneum smelter. The EPA required the smelter TMHP in a December 2001 Administrative Order on Consent (AOC) with Doe Run to which the department is not a signatory. The department required the smelter TMHP in the April 2002 Settlement Agreement with Doe Run and the Attorney General's Office (AGO) to resolve outstanding violations and corrective actions in the department's September 2001 Order to Abate and Cease and Desist Violations. The EPA approved the current smelter TMHP by letter dated July 8, 2003. The department disapproved the same plan by letter dated November 16, 2004. A thorough review of the record would reveal significant differences between the department and the EPA regarding



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technical requirements and enforcement philosophy regarding transportation and materials handling related to the Herculaneum smelter. These differences create conditions that allow Doe Run to continue to operate in a manner which causes harm to Missouri's public health and environment and hampers the agencies' effort to regulate them.

The department has produced extensive comments throughout the development of the Herculaneum smelter TMHP plan dating back to the beginning in 2001. The department and the AGO have asserted the state's authority to enforce the smelter TMHP under the Settlement Agreement, and pushed Doe Run to the extent of this authority to improve transportation and materials handling throughout its network. The department has consistently advocated from the beginning a comprehensive company-wide and system-wide approach to Doe Run's transportation and materials handling processes on-site and off-site. It has long been apparent to us that addressing these issues for only one facility, or having separate plans for different facilities, processes, modes and routes of transportation, etc., is inefficient and ineffective. The agencies must now arrive at a consensus on what actions are needed for Doe Run to achieve a workable company-wide and system-wide TMHP and adequate facilities to prevent and contain releases.

Doe Run has initiated activities through its Best Practices Concentrate Transportation Team, and employed consultants to assist in evaluating Doe Run's facilities, other facilities used by Doe Run, and selected other facilities in Alaska, Canada, and Europe to improve transportation of concentrates in Missouri. As you mention in your letter, the report of these activities was expected by July 31, 2005. However, Doe Run has informed the Hazardous Waste Program staff that completion of this report has been delayed, and we currently do not know when to expect its completion. We have reservations about the type of improvements to expect from the company as a result of its efforts. It is unclear how, or if, this work will result in modifications to the smelter TMHP, or expansion of the TMHP company-wide and system-wide. It is our understanding that Doe Run's current efforts address only concentrate transportation and handling. Other metal-bearing materials, such as crushed ore, drosses, etc., will not be addressed in the current effort.

— Doe Run's verbal-descriptions of facilities it and its consultant visited in Alaska, Canada, and Europe indicate there may be problems in concentrate transportation and handling at these facilities. Doe Run described its potential improvements as a result of its efforts as logistical in nature. While logistical or efficiency improvements may result in less material being released during transportation and handling, we continue to believe that more substantive improvements in procedures, physical facilities, and transportation may be needed to achieve meaningful reductions in releases. We also believe it may be necessary to engage the transportation companies and the owner/operators of other facilities used by Doe Run in actions taken by the agencies to prevent and contain releases.

As you mention in your letter, the department and the EPA have had initial discussions regarding which agency should take the lead in addressing the transportation and materials handling issues.

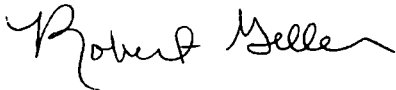
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My understanding of these discussions indicates both agencies need to identify specific applicable legal authorities to use to compel Doe Run to prevent, minimize, and/or contain releases of hazardous substances, pollutants, and contaminants, since our laws and regulations seem to pertain mainly to responding to releases after they occur. As you know, the department has taken the lead on investigating the Washington County Concentrate Site to determine if there have been violations of the Missouri Hazardous Waste Management Law and Regulations. This effort could help form the basis for more effective improvements by Doe Run and its transport contractors. The department in consultation with the Attorney General's Office would be willing to lead the negotiations with Doe Run on a new enforceable mechanism to address transportation and materials handling issues, since we have aggressively pursued these issues on a number of fronts. We would obviously coordinate our efforts and enforcement strategy with the EPA, and would seek the EPA's assistance as we move forward. I recommend that the EPA Region VII's Office of Regional Counsel and the Missouri Attorney General's Office work together directly to identify authorities upon which the agencies may base negotiations and/or enforcement responses.

Again, thank you for your interest in Doe Run's transportation and materials handling issues as they pertain to lead contamination and recontamination of response actions in Missouri. We look forward to working with you on addressing these issues. Please contact me at (573) 751-2747 if you wish to discuss these matters further.

Sincerely,

HAZARDOUS WASTE PROGRAM

A handwritten signature in cursive script, appearing to read "Robert Geller".

Robert Geller
Director

RG:rhl

C: Joe Bindbeautal, AGO